

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-7272

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS MONIQUE BRADDY, JR.,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Rebecca Beach Smith, Chief District Judge. (4:07-cr-00048-RBS-TEM-1)

Submitted: September 24, 2013 Decided: September 27, 2013

Before NIEMEYER and THACKER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed in part, dismissed in part by unpublished per curiam opinion.

Thomas Monique Braddy, Jr., Appellant Pro Se. Howard Jacob Zlotnick, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Thomas Monique Braddy, Jr., appeals the district court's order denying his "Motion for Reconsideration of 28 U.S.C. § 2255 and/or Motion Under Audita Querela." Having reviewed the record, we affirm the district court's order to the extent it denies Braddy a writ of audita querela. See United States v. Braddy, No. 4:07-cr-00048-RBS-TEM-1 (E.D. Va. July 29, 2013).

The portion of the district court's order construing Braddy's petition as an unauthorized successive § 2255 motion and dismissing it for lack of jurisdiction is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). When, as here, the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). We have independently reviewed the record and conclude that Braddy has not made the requisite showing.

Accordingly, we deny a certificate of appealability, affirm in part, and dismiss in part. We dispense with oral

argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART